

FAR -- Part 46

Quality Assurance

(FAC 97-11)

4 March 1999

46.000 -- Scope of Part.

This part prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

Subpart 46.1 -- General

46.101 -- Definitions.

"Acceptance," as used in this part, means the act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

"Commercial item" (see 2.101).

"Contract quality requirements," means the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

"Critical nonconformance" means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

"Government contract quality assurance," means the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

"Inspection," means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

"Latent defect" means a defect which exists at the time of acceptance but cannot be discovered by a reasonable inspection.

"Major nonconformance" means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

"Minor nonconformance" means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

Production and Quality Management 201 Handout Booklet

"Off-the-shelf item," means an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. The item may be commercial or produced to military or Federal specifications or description.

"Patent defect" means any defect which exists at the time of acceptance and is not a latent defect.

"Subcontractor" (see 44.101).

"Testing," means that element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

46.102 -- Policy.

Agencies shall ensure that --

- (a) Contracts include inspection and other quality requirements, including warranty clauses when appropriate, that are determined necessary to protect the Government's interest;
- (b) Supplies or services tendered by contractors meet contract requirements;
- (c) Government contract quality assurance is conducted before acceptance (except as otherwise provided in this part), by or under the direction of Government personnel;
- (d) No contract precludes the Government from performing inspection;
- (e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407;
- (f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection (Section 8002 of Public Law 103-355). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and
- (g) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see Subpart 42.1).

46.103 -- Contracting Office Responsibilities.

Contracting offices are responsible for --

- (a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);
- (b) Including in solicitations and contracts the appropriate requirements for the contractor's control of quality for the supplies or services to be acquired;
- (c) Issuing any necessary instructions to the cognizant contract administration office and acting on recommendations submitted by that office (see 42.301 and 46.104(f));
- (d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and

- (e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements.

46.104 -- Contract Administration Office Responsibilities.

When a contract is assigned for administration to the contract administration office cognizant of the contractor's plant, that office, unless specified otherwise, shall --

- (a) Develop and apply efficient procedures for performing Government contract quality assurance actions under the contract in accordance with the written direction of the contracting office;
- (b) Perform all actions necessary to verify whether the supplies or services conform to contract quality requirements;
- (c) Maintain, as part of the performance records of the contract, suitable records reflecting --
 - (1) The nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and
 - (2) Decisions regarding the acceptability of the products, the processes, and the requirements, as well as action to correct defects.
- (d) Implement any specific written instructions from the contracting office;
- (e) Report to the contracting office any defects observed in design or technical requirements, including contract quality requirements; and
- (f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

46.105 -- Contractor Responsibilities.

- (a) The contractor is responsible for carrying out its obligations under the contract by --
 - (1) Controlling the quality of supplies or services;
 - (2) Tendering to the Government for acceptance only those supplies or services that conform to contract requirements;
 - (3) Ensuring that vendors or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptable quality control system; and
 - (4) Maintaining substantiating evidence, when required by the contract, that the supplies or services conform to contract quality requirements, and furnishing such information to the Government as required.
- (b) The contractor may be required to provide and maintain an inspection system or program for the control of quality that is acceptable to the Government (see 46.202).
- (c) The control of quality by the contractor may relate to, but is not limited to --

Production and Quality Management 201 Handout Booklet

- (1) Manufacturing processes, to ensure that the product is produced to, and meets, the contract's technical requirements;
 - (2) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;
 - (3) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;
 - (4) Reliability and maintainability assessment (life, endurance, and continued readiness);
 - (5) Fabrication and delivery of products, to ensure that only conforming products are tendered to the Government;
 - (6) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;
 - (7) Preservation, packaging, packing, and marking; and
 - (8) Procedures and processes for services to ensure that services meet contract performance requirements.
- (d) The contractor is responsible for performing all inspections and test required by the contract except those specifically reserved for performance by the Government (see 46.201(c)).

Subpart 46.2 -- Contract Quality Requirements

46.201 -- General.

- (a) The contracting officer shall include in the solicitation and contract the appropriate quality requirements. The type and extent of contract quality requirements needed depends on the particular acquisition and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.
- (b) As feasible, solicitations and contracts may provide for alternative, but substantially equivalent, inspection methods to obtain wide competition and low cost. The contracting officer may also authorize contractor-recommended alternatives when in the Government's interest and approved by the activity responsible for technical requirements.
- (c) Although contracts generally make contractors responsible for performing inspection before tendering supplies to the Government, there are situations in which contracts will provide for specialized inspections to be performed solely by the Government. Among situations of this kind are --
 - (1) Tests that require use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories (e.g., ballistic testing of ammunition, unusual environmental tests, and simulated service tests); and
 - (2) Contracts that require Government testing for first article approval (see Subpart 9.3).
- (d) Except as otherwise specified by the contract, required contractor testing may be performed in the contractor's or subcontractor's laboratory or testing facility, or in any other laboratory or testing facility acceptable to the Government.

46.202 -- Types of Contract Quality Requirements.

Contract quality requirements fall into four general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved.

46.202-1 -- Contracts for Commercial Items.

When acquiring commercial items (see Part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

46.202-2 -- Government Reliance on Inspection by Contractor.

- (a) Except as specified in (b) of this section, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired at or below the simplified acquisition threshold conform to contract quality requirements before they are tendered to the Government (see 46.301).
- (b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider --
 - (1) The nature of the supplies and services being purchased and their intended use;
 - (2) The potential losses in the event of defects;
 - (3) The likelihood of uncontested replacement or correction of defective work; and
 - (4) The cost of detailed Government inspection.

46.202-3 -- Standard Inspection Requirements.

- (a) Standard inspection requirements are contained in the clauses prescribed in 46.302 through 46.308, and 46.310, and in the product and service specifications that are included in solicitations and contracts.
- (b) The clauses referred to in (a) of this section --
 - (1) Require the contractor to provide and maintain an inspection system that is acceptable to the Government;
 - (2) Give the Government the right to make inspections and tests while work is in process; and
 - (3) Require the contractor to keep complete, and make available to the Government, records of its inspection work.

46.202-4 -- Higher-Level Contract Quality Requirements.

- (a) Requiring compliance with higher-level quality standards is appropriate in solicitations and contracts for complex or critical items (see 46.203(b) and (c)) or when the technical requirements of the contract require --
 - (1) Control of such things as work operations, in-process controls, and inspection; or
 - (2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

- (b) When the contracting officer, in consultation with technical personnel, finds it is in the Government's interest to require that higher-level quality standards be maintained, the contracting officer shall use the clause prescribed at 46.311. The contracting officer shall indicate in the clause which higher-level quality standards will satisfy the Government's requirement. Examples of higher-level quality standards are ISO 9001, 9002, or 9003; ANSI/ASQC Q9001, Q9002, or Q9003; QS-9000; AS-9000; ANSI/ASQC E4; and ANSI/ASME NQA-1.

46.203 -- Criteria for Use of Contract Quality Requirements.

The extent of contract quality requirements, including contractor inspection, required under a contract shall usually be based upon the classification of the contract item (supply or service) as determined by its technical description, its complexity, and the criticality of its application.

- (a) *Technical description.* Contract items may be technically classified as --
 - (1) Commercial (described in commercial catalogs, drawings, or industrial standards; see Part 2); or
 - (2) Military-Federal (described in Government drawings and specifications).
- (b) *Complexity.*
 - (1) Complex items have quality characteristics, not wholly visible in the end item, for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.
 - (2) Noncomplex items have quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements.
- (c) *Criticality.*
 - (1) A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. A critical item may be either peculiar, meaning it has only one application, or common, meaning it has multiple applications.
 - (2) A noncritical application is any other application. Noncritical items may also be either peculiar or common.

Subpart 46.3 -- Contract Clauses

46.301 -- Contractor Inspection Requirements.

The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be at or below the simplified acquisition threshold and

- (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or

- (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-2(b).

46.302 -- Fixed-Price Supply Contracts.

The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies -- Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.

46.303 -- Cost-Reimbursement Supply Contracts.

The contracting officer shall insert the clause at 52.246-3, Inspection of Supplies -- Cost-Reimbursement, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a cost-reimbursement contract is contemplated.

46.304 -- Fixed-Price Service Contracts.

The contracting officer shall insert the clause at 52.246-4, Inspection of Services -- Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold and inclusion is in the Government's interest.

46.305 -- Cost-Reimbursement Service Contracts.

The contracting officer shall insert the clause at 52.246-5, Inspection of Services -- Cost Reimbursement, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated.

46.306 -- Time-and-Material and Labor-Hour Contracts.

The contracting officer shall insert the clause at 52.246-6, Inspection -- Time-and-Material and Labor-Hour, in solicitations and contracts when a time-and-material contract or a labor-hour contract is contemplated. If Government inspection and acceptance are to be performed at the contractor's plant, the contracting officer shall use the clause with its Alternate I.

46.307 -- Fixed-Price Research and Development Contracts.

- (a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development -- Fixed-Price, in solicitations and contracts for research and development when --
 - (1) The primary objective of the contract is the delivery of end items other than designs, drawings, or reports,
 - (2) A fixed-price contract is contemplated, and

Production and Quality Management 201 Handout Booklet

- (3) The contract amount is expected to exceed the simplified acquisition threshold; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.
- (b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold, and its use is in the Government's interest.

46.308 -- Cost-Reimbursement Research and Development Contracts.

The contracting officer shall insert the clause at 52.246-8, Inspection of Research and Development -- Cost-Reimbursement, in solicitations and contracts for research and development when

- (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, and
- (b) a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. If it is contemplated that the contract will be on a no-fee basis, the contracting officer shall use the clause with its Alternate I.

46.309 -- Research and Development Contracts (Short Form).

The contracting officer shall insert the clause at 52.246-9, Inspection of Research and Development (Short Form), in solicitations and contracts for research and development when the clause prescribed in 46.307 or the clause prescribed in 46.308 is not used.

46.310 -- Facilities Contracts.

The contracting officer shall insert the clause at 52.246-10, Inspection of Facilities, in solicitations and contracts when a facilities contract is contemplated.

46.311 -- Higher-Level Contract Quality Requirement.

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-4).

46.312 -- Construction Contracts.

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-4).

46.313 -- Contracts for Dismantling, Demolition, or Removal of Improvements.

The contracting officer shall insert the clause at 52.246-13, Inspection -- Dismantling, Demolition, or Removal of Improvements, in solicitations and contracts for dismantling, demolition, or removal of improvements.

46.314 -- Transportation Contracts.

The contracting officer shall insert the clause at 52.246-14, Inspection of Transportation, in solicitations and contracts for freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by

international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C.10721(b)(1). (See Part 47, Transportation.)

46.315 -- Certificate of Conformance.

The contracting officer shall insert the clause at 52.246-15, Certificate of Conformance, in solicitations and contracts for supplies or services when the conditions in 46.504 apply.

46.316 -- Responsibility for Supplies.

The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for

- (a) supplies,
- (b) services involving the furnishing of supplies, or
- (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold and inclusion of the clause is authorized under agency procedures.

Subpart 46.4 -- Government Contract Quality Assurance

46.401 -- General.

- (a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify --
 - (1) All work requiring surveillance; and
 - (2) The method of surveillance.
- (b) Each contract shall designate the place or places where the Government reserves the right to perform quality assurance.
- (c) If the contract provides for performance of Government quality assurance at source, the place or places of performance may not be changed without the authorization of the contracting officer.
- (d) If a contract provides for delivery and acceptance at destination and the Government inspects the supplies at a place other than destination, the supplies shall not ordinarily be reinspected at destination, but should be examined for quantity, damage in transit, and possible substitution or fraud.
- (e) Government inspection shall be performed by or under the direction or supervision of Government personnel.
- (f) Government inspection shall be documented on an inspection or receiving report form or commercial shipping document/packing list, under agency procedures (see Subpart 46.6).
- (g) Agencies may prescribe the use of inspection approval or disapproval stamps to identify and control supplies and material that have been inspected for conformance with contract quality requirements.

46.402 -- Government Contract Quality Assurance at Source.

Agencies shall perform contract quality assurance, including inspection, at source if --

- (a) Performance at any other place would require uneconomical disassembly or destructive testing;
- (b) Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;
- (c) Special required instruments, gauges, or facilities are available only at source;
- (d) Performance at any other place would destroy or require the replacement of costly special packing and packaging;
- (e) Government inspection during contract performance is essential; or
- (f) It is determined for other reasons to be in the Government's interest.

46.403 -- Government Contract Quality Assurance at Destination.

- (a) Government contract quality assurance that can be performed at destination is normally limited to inspection of the supplies or services. Inspection shall be performed at destination under the following circumstances --
 - (1) Supplies are purchased off-the-shelf and require no technical inspection;
 - (2) Necessary testing equipment is located only at destination;
 - (3) Perishable subsistence supplies purchased within the United States, except that those supplies destined for overseas shipment will normally be inspected for condition and quantity at points of embarkation;
 - (4) Brand name products purchased for authorized resale through commissaries or similar facilities (however, supplies destined for direct overseas shipment may be accepted by the contracting officer or an authorized representative on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the transshipment point);
 - (5) The products being purchased are processed under direct control of the National Institutes of Health or the Food and Drug Administration of the Department of Health and Human Services;
 - (6) The contract is for services performed at destination; or
 - (7) It is determined for other reasons to be in the Government's interest.
- (b) Overseas inspection of supplies shipped from the United States shall not be required except in unusual circumstances, and then only when the contracting officer determines in advance that inspection can be performed or makes necessary arrangements for its performance.

46.404 -- Government Contract Quality Assurance for Acquisitions at or Below the Simplified Acquisition Threshold.

- (a) In determining the type and extent of Government contract quality assurance to be required for contracts at or below the simplified acquisition threshold, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-2).

- (b) When the conditions in 46.202-2(b) apply, the following policies shall govern:
 - (1) Unless a special situation exists, the Government shall inspect contracts at or below the simplified acquisition threshold at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.
 - (2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications.
 - (3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.

46.405 -- Subcontracts.

- (a) Government contract quality assurance on subcontracted supplies or services shall be performed only when required in the Government's interest. The primary purpose is to assist the contract administration office cognizant of the prime contractor's plant in determining the conformance of subcontracted supplies or services with contract requirements or to satisfy one or more of the factors included in (b) of this section. It does not relieve the prime contractor of any responsibilities under the contract. When appropriate, the prime contractor shall be requested to arrange for timely Government access to the subcontractor facility.
- (b) The Government shall perform quality assurance at the subcontract level when --
 - (1) The item is to be shipped from the subcontractor's plant to the using activity and inspection at source is required;
 - (2) The conditions for quality assurance at source are applicable (see 46.402);
 - (3) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, are to be performed by the Government; or
 - (4) It is otherwise required by the contract or determined to be in the Government's interest.
- (c) Supplies or services for which certificates, records, reports, or similar evidence of quality are available at the prime contractor's plant shall not be inspected at the subcontractor's plant, except occasionally to verify this evidence or when required under (b) of this section.
- (d) All oral and written statements and contract terms and conditions relating to Government quality assurance actions at the subcontract level shall be worded so as not to --
 - (1) Affect the contractual relationship between the prime contractor and the Government, or between the prime contractor and the subcontractor;
 - (2) Establish a contractual relationship between the Government and the subcontractor; or
 - (3) Constitute a waiver of the Government's right to accept or reject the supplies or services.

46.406 -- Foreign Governments.

Government contract quality assurance performed for foreign governments or international agencies shall be administered according to the foreign policy and security objectives of the United States. Such support shall be

furnished only when consistent with or required by legislation, executive orders, or agency policies concerning mutual international programs.

46.407 -- Nonconforming Supplies or Services.

- (a) Contracting officers should reject supplies or services not conforming in all respects to contract requirements (see 46.102). In those instances where deviation from this policy is found to be in the Government's interest, such supplies or services may be accepted only as authorized in this section.
- (b) Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services when this can be accomplished within the required delivery schedule. Unless the contract specifies otherwise (as may be the case in some cost-reimbursement contracts), correction or replacement shall be without additional cost to the Government. Subparagraph (e)(2) of the clause at 52.246-2, Inspection of Supplies -- Fixed-Price, reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.
- (c)
 - (1) In situations not covered paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance is critical or major. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such supplies or services is determined by the contracting officer to be in the Government's interest. The contracting officer shall make this determination, based upon --
 - (i) Advice of the technical activity that the material is safe to use, and will perform its intended purpose;
 - (ii) Information regarding the nature and extent of the nonconformance;
 - (iii) A request from the contractor for acceptance of the supplies or services (if feasible);
 - (iv) A recommendation for acceptance or rejection, with supporting rationale; and
 - (v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.
 - (2) The cognizant contract administration office, or other Government activity directly involved, shall furnish this data to the contracting officer in writing, except that in urgent cases it may be furnished orally and later confirmed in writing. Before making a decision to accept, the contracting officer shall obtain the concurrence of the activity responsible for the technical requirements of the contract and, where health factors are involved, of the responsible health official of the agency concerned.
- (d) If the nonconformance is minor, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of supplies and services with critical or major nonconformances is outside the scope of the review group .
- (e) Contracting officers shall discourage the repeated tender of nonconforming supplies or services, including those with only minor nonconformances, by appropriate action, such as rejection and documenting the contractor's performance record.
- (f) Each contract under which supplies or services with critical or major nonconformances are accepted as authorized in paragraph (c) of this section shall be modified to provide for an equitable price reduction or

other consideration. However, when supplies or services involving minor nonconformances are accepted, the contract shall not be modified unless --

- (1) It appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the modification, or
 - (2) The Government's interests otherwise require a contract modification.
- (g) Notices of rejection shall include the reasons for rejection and be furnished promptly to the contractor. Promptness in giving this notice is essential because, if timely nature of rejection is not furnished, acceptance may in certain cases be implied as a matter of law. The notice shall be in writing if --
- (1) The supplies or services have been rejected at a place other than the contractor's plant;
 - (2) The contractor persists in offering nonconforming supplies or services for acceptance; or
 - (3) Delivery or performance was late without excusable cause.

46.408 -- Single-Agency Assignments of Government Contract Quality Assurance.

- (a) Government-wide responsibility for quality assurance support for acquisitions of certain commodities is assigned as follows:
- (1) For drugs, biologics, and other medical supplies -- the Food and Drug Administration;
 - (2) For food, except seafood -- the Department of Agriculture.
 - (3) For seafood -- the National Marine Fisheries Service of the Department of Commerce.
- (b) Agencies requiring quality assurance support for acquiring these supplies should request the support directly from the cognizant office.

Subpart 46.5 -- Acceptance

46.501 -- General.

Acceptance constitutes acknowledgment that the supplies or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to other terms and conditions of the contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. Supplies or services shall ordinarily not be accepted before completion of Government contract quality assurance actions (however, see 46.504). Acceptance shall ordinarily be evidenced by execution of an acceptance certificate on an inspection or receiving report form or commercial shipping document/packing list.

46.502 -- Responsibility for Acceptance.

Acceptance of supplies or services is the responsibility of the contracting officer. When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

46.503 -- Place of Acceptance.

Production and Quality Management 201 Handout Booklet

Each contract shall specify the place of acceptance. Contracts that provide for Government contract quality assurance at source shall ordinarily provide for acceptance at source. Contracts that provide for Government contract quality assurance at destination shall ordinarily provide for acceptance at destination. (For transportation terms, see Subpart 47.3.) Supplies accepted at a place other than destination shall not be reinspected at destination for acceptance purposes, but should be examined at destination for quantity, damage in transit, and possible substitution or fraud.

46.504 -- Certificate of Conformance.

A certificate of conformance (see 46.315) may be used in certain instances instead of source inspection (whether the contract calls for acceptance at source or destination) at the discretion of the contracting officer if the following conditions apply:

- (a) Acceptance on the basis of a contractor's certificate of conformance is in the Government's interest.
- (b)
 - (1) Small losses would be incurred in the event of a defect; or
 - (2) Because of the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case shall the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

46.505 -- Transfer of Title and Risk of Loss.

- (a) Title to supplies shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the Government upon --
 - (1) Delivery of the supplies to a carrier if transportation is f.o.b. origin; or
 - (2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) of this section shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.
- (d) Under paragraph (b) of this section, the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.
- (e) The policy expressed in (a) through (d) of this section is specified in the clause at 52.246-16, Responsibility for Supplies, which is prescribed in 46.316.

Subpart 46.6 -- Material Inspection and Receiving Reports

Agencies shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection (see 46.401) and acceptance (see 46.501).

Subpart 46.7 -- Warranties

46.701 -- Definitions.

"Acceptance" (see 46.101).

"Correction," as used in this subpart, means the elimination of a defect.

"Warranty," as used in this subpart, means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

46.702 -- General.

- (a) The principal purposes of a warranty in a Government contract are --
 - (1) To delineate the rights and obligations of the contractor and the Government for defective items and services and
 - (2) To foster quality performance.
- (b) Generally, a warranty should provide --
 - (1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the Government; and
 - (2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.
- (c) The benefits to be derived from a warranty must be commensurate with the cost of the warranty to the Government.

46.703 -- Criteria for Use of Warranties.

The use of warranties is not mandatory. In determining whether a warranty is appropriate for a specific acquisition, the contracting officer shall consider the following factors:

- (a) *Nature and use of the supplies or services.* This includes such factors as --
 - (1) Complexity and function;
 - (2) Degree of development;
 - (3) State of the art;
 - (4) End use;
 - (5) Difficulty in detecting defects before acceptance; and
 - (6) Potential harm to the Government if the item is defective.
- (b) *Cost.* Warranty costs arise from --
 - (1) The contractor's charge for accepting the deferred liability created by the warranty; and
 - (2) Government administration and enforcement of the warranty (see paragraph (c) of this section).

Production and Quality Management 201 Handout Booklet

- (c) *Administration and enforcement.* The Government's ability to enforce the warranty is essential to the effectiveness of any warranty. There must be some assurance that an adequate administrative system for reporting defects exists or can be established. The adequacy of a reporting system may depend upon such factors as the --
 - (1) Nature and complexity of the item;
 - (2) Location and proposed use of the item;
 - (3) Storage time for the item;
 - (4) Distance of the using activity from the source of the item;
 - (5) Difficulty in establishing existence of defects; and
 - (6) Difficulty in tracing responsibility for defects.
- (d) *Trade practice.* In many instances an item is customarily warranted in the trade, and, as a result of that practice, the cost of an item to the Government will be the same whether or not a warranty is included. In those instances, it would be in the Government's interest to include such a warranty.
- (e) *Reduced requirements.* The contractor's charge for assumption of added liability may be partially or completely offset by reducing the Government's contract quality assurance requirements where the warranty provides adequate assurance of a satisfactory product.

46.704 -- Authority for Use of Warranties.

The use of a warranty in an acquisition shall be approved in accordance with agency procedures.

46.705 -- Limitations.

- (a) Except for the warranties in the clauses at 52.246-3, Inspection of Supplies -- Cost-Reimbursement, and 52.246-8, Inspection of Research and Development -- Cost-Reimbursement, the contracting officer shall not include warranties in cost-reimbursement contracts, unless authorized in accordance with agency regulations (see 46.708).
- (b) Warranty clauses shall not limit the Government's rights under an inspection clause (see Subpart 46.3) in relation to latent defects, fraud, or gross mistakes that amount to fraud.
- (c) Except for warranty clauses in construction contracts, warranty clauses shall provide that the warranty applies notwithstanding inspection and acceptance or other clauses or terms of the contract.

46.706 -- Warranty Terms and Conditions.

- (a) To facilitate the pricing and enforcement of warranties, the contracting officer shall ensure that warranties clearly state the --
 - (1) Exact nature of the item and its components and characteristics that the contractor warrants;
 - (2) Extent of the contractor's warranty including all of the contractor's obligations to the Government for breach of warranty;
 - (3) Specific remedies available to the Government; and
 - (4) Scope and duration of the warranty.
- (b) The contracting officer shall consider the following guidelines when preparing warranty terms and conditions:

(1) *Extent of contractor obligations.*

- (i) Generally, the contractor's obligations under warranties extend to all defects discovered during the warranty period, but do not include damage caused by the Government. When a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item that may require special protection (e.g., installation, components, accessories, subassemblies, preservation, packaging, and packing, etc.).
- (ii) If the Government specifies the design of the end item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for correction of defects shall usually be limited to defects in material and workmanship or failure to conform to specifications. If the Government does not specify the design, the warranty extends also to the usefulness of the design.
- (iii) If express warranties are included in a contract (except contracts for commercial items), all implied warranties of merchantability and fitness for a particular purpose shall be negated by the use of specific language in the clause (see clauses 52.246-17, Warranty of Supplies of a Noncomplex Nature; 52.246-18, Warranty of Supplies of a Complex Nature; and 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria).

(2) *Remedies.*

- (i) Normally, a warranty shall provide as a minimum that the Government may --
 - (A) Obtain an equitable adjustment of the contract, or
 - (B) Direct the contractor to repair or replace the defective items at the contractor's expense.
- (ii) If it is not practical to direct the contractor to make the repair or replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Government, the warranty should provide alternate remedies, such as authorizing the Government to --
 - (A) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or
 - (B) Arrange for the repair or replacement of the defective item, by the Government or by another source, at the contractor's expense.
- (iii) If it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an alternate source for repair, or to replace the defective item, the warranty should provide that the Government may repair, or require the contractor to repair, the item in place at the contractor's expense. The contract shall provide that in the circumstance where the Government is to accomplish the repair, the contractor will furnish at the place of delivery the material or parts, and the installation instructions required to successfully accomplish the repair.
- (iv) Unless provided otherwise in the warranty, the contractor's obligation to repair or replace the defective item, or to agree to an equitable adjustment of the contract, shall include responsibility for the costs of furnishing all labor and material to --
 - (A) Reinspect items that the Government reasonably expected to be defective,
 - (B) Accomplish the required repair or replacement of defective items, and

- (C) Test, inspect, package, pack, and mark repaired or replaced items.
 - (v) If repair or replacement of defective items is required, the contractor shall generally be required by the warranty to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the contractor's plant and subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises alternate remedies, the contractor's liability for transportation charges incurred shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the contractor's plant and subsequent return.
- (3) *Duration of the warranty.* The time period or duration of the warranty must be clearly specified and shall be established after consideration of such factors as
- (i) the estimated useful life of the item,
 - (ii) the nature of the item including storage or shelf-life, and
 - (iii) trade practice. The period specified shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.
- (4) *Notice.* The warranty shall specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which shall apply to all defects discovered during the warranty period, shall be long enough to assure that the Government has adequate time to give notice to the contractor. The contracting officer shall consider the following factors when establishing the notice period:
- (i) The time necessary for the Government to discover the defects.
 - (ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.
 - (iii) The time required to discover and report defective replacements.
- (5) *Markings.* The packaging and preservation requirements of the contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the supplies that the supplies are under warranty. Markings may be brief but should include
- (i) a brief statement that a warranty exists,
 - (ii) the substance of the warranty,
 - (iii) its duration, and
 - (iv) who to notify if the supplies are found to be defective. For commercial items (see 46.709), the contractor's trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.
- (6) *Consistency.* Contracting officers shall ensure that the warranty clause and any other warranty conditions in the contract (e.g., in the specifications or an inspection clause) are consistent. To the extent practicable, all of the warranties to be contained in the contract should be expressed in the warranty clause.

46.707 -- Pricing Aspects of Fixed-Price Incentive Contract Warranties.

If a fixed-price incentive contract contains a warranty (see 46.708), the estimated cost of the warranty to the contractor should be considered in establishing the incentive target price and the ceiling price of the contract. All costs incurred, or estimated to be incurred, by the contractor in complying with the warranty shall be considered when establishing the total final price. Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the Government.

46.708 -- Warranties of Data.

Warranties of data shall be developed and used in accordance with agency regulations.

46.709 -- Warranties of Commercial Items.

The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of commercial items (see Part 12).

46.710 -- Contract Clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (see 46.709 for warranties for commercial items). However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.

(a)

- (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures.
- (2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.
- (3) If the supplies cannot be obtained from another source, the contracting officer may use the clause with its Alternate III.
- (4) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate IV.
- (5) If it is anticipated that recovery of the warranted items will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate V.

(b)

- (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-18, Warranty of Supplies of a Complex Nature, in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures.

Production and Quality Management 201 Handout Booklet

- (2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.
 - (3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate III.
 - (4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate IV.
- (c)
- (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a warranty clause has been approved under agency procedures.
 - (2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate I.
 - (3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate II.
 - (4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate III.
- (d) The contracting officer may insert a clause substantially the same as the clause at 52.246-20, Warranty of Services, in solicitations and contracts for services when a fixed-price contract for services is contemplated and the use of warranty clause has been approved under agency procedures; unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used.
- (e)
- (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-21, Warranty of Construction, in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated and the use of a warranty clause has been approved under agency procedures.
 - (2) If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may use the clause with its Alternate I.

Subpart 46.8 -- Contractor Liability for Loss of or Damage to Property of the Government

46.800 -- Scope of Subpart.

This subpart prescribes policies and procedures for limiting contractor liability for loss of or damage to property of the Government that --

- (a) Occurs after acceptance and

- (b) Results from defects or deficiencies in the supplies delivered or services performed.

46.801 -- Applicability.

- (a) This subpart applies to contracts other than those for
 - (1) information technology, including telecommunications,
 - (2) construction,
 - (3) architect-engineer services and
 - (4) maintenance and rehabilitation of real property. This subpart does not apply to items priced at or based on catalog or market prices except as indicated in 46.804.
- (b) See Subpart 46.7, Warranties, for policies and procedures concerning contractor liability caused by nonconforming technical data.

46.802 -- Definition.

"High-value item," as used in this subpart, means a contract end item that

- (1) Has a high unit cost (normally exceeding \$100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and
- (2) Is designated by the contracting officer as a high-value item.

46.803 -- Policy.

- (a) *General.* The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that
 - (1) occurs after acceptance of supplies delivered or services performed under a contract and
 - (2) results from defects or deficiencies in the supplies or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.
- (b) *High-value items.* In contracts requiring delivery of high-value items, the Government will relieve contractors of contractual liability for loss of or damage to those items. However, this relief shall not limit the Government's rights arising under the contract to --
 - (1) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a high-value item occurs; or
 - (2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.
- (c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) of this section when contractor liability can be preserved without increasing the contract price.
- (d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under paragraphs (a) and (b) of this section does not apply --

Production and Quality Management 201 Handout Booklet

- (1) To the extent that contractor liability is expressly provided under a contract clause authorized by this regulation;
- (2) When a defect or deficiency in, or Government's acceptance of, the supplies or services results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel; or
- (3) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Government through purchase or use of the supplies delivered or services performed under the contract.

46.804 -- Items Priced at or Based on Catalog or Market Prices.

Contractors generally

- (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and
- (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices, contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.

46.805 -- Contract Clauses.

- (a) Contracts that exceed the simplified acquisition threshold. The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the simplified acquisition threshold and the contract is subject to the requirements of this subpart as indicated in 46.801:
 - (1) In contracts requiring delivery of end items that are not high-value items, insert the clause at 52.246-23, Limitation of Liability.
 - (2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability -- High Value Items.
 - (3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (a)(1) and (a)(2) of this section, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.
 - (4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability -- Services.
 - (5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (a)(4) of this section and the appropriate clause or clauses prescribed in subparagraph (a)(1), (2), or (3) of this section, and identify clearly in the contract schedule any high-value line items.
- (b) Acquisitions at or below the simplified acquisition threshold. The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold and may obtain any price reduction that is appropriate.

52.246 -- Quality Assurance Provisions and Clauses.

52.246-1 -- Contractor Inspection Requirements (Apr 1984)

As prescribed in 46.301, insert the following clause:

Contractor Inspection Requirements (Apr 1984)

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

(End of Clause)

52.246-2 -- Inspection of Supplies -- Fixed-Price (Aug. 1996)

As prescribed in 46.302, insert the following clause:

Inspection of Supplies -- Fixed-Price (Aug. 1996)

- (a) *Definition.* "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.
- (c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.
- (e)
 - (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.
 - (2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

Production and Quality Management 201 Handout Booklet

- (f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either
 - (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or
 - (2) terminate the contract for default.

Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

- (i)
 - (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time --
 - (i) When Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and
 - (ii) When the supplies will be ready for Government inspection.
 - (2) The Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.
- (j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.
- (k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor
 - (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or

- (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of Clause)

Alternate I (Jul 1985). If a fixed-price incentive contract is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause.

- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, in the total final negotiated cost fixed under the incentive price revision clause. However, replacements or corrections by the Contractor after the establishment of the total final price shall be at no increase in the total final price.
- (h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either
 - (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the target price or, if established, the total final price or
 - (2) may terminate the contract for default.

Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce any target price or, if it is established, the total final contract price. Failure to agree upon an equitable price reduction shall be a dispute.

* * * * *

- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor
 - (1) at no increase in any target price or, if it is established, the total final price of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in any target price, or, if it is established, the total final price of this contract, if the Contractor fails to meet such delivery schedule; or
 - (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the total final price as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within

Production and Quality Management 201 Handout Booklet

a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce any target price or, if it is established, the total final price of this contract.

Alternate II (Jul 1985). If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause:

- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, when redetermining the prices under the price redetermination clause. However, replacements or corrections by the Contractor after the establishment of the redetermined prices shall be at no increase in the redetermined price.
- (h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either
 - (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the initial contract prices or, if established, the redetermined contract prices or
 - (2) terminate the contract for default.

Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce the initial contract price or, if it is established, the redetermined contract prices. Failure to agree upon an equitable price reduction shall be a dispute.

* * * * *

- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor
 - (1) at no increase in the initial contract prices, or, if it is established, the redetermined prices of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in the initial contract prices, or, if it is established, the redetermined prices of this contract, if the Contractor fails to meet such delivery schedule; or
 - (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the initial contract prices, or, if it is established, the redetermined prices of this contract, as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce the initial contract prices, or, if it is established, the redetermined prices of this contract.

52.246-3 -- Inspection of Supplies -- Cost-Reimbursement (Apr 1984)

As prescribed in 46.303, insert the following clause in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a cost-reimbursement contract is contemplated:

Inspection of Supplies -- Cost-Reimbursement (Apr 1984)

(a) *Definitions.*

“*Contractor’s managerial personnel*,” as used in this clause, means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

- (1) All or substantially all of the Contractor’s business;
- (2) All or substantially all of the Contractor’s operation at a plant or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with performing this contract.

“*Supplies*,” as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.
- (f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g)
 - (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may --

Production and Quality Management 201 Handout Booklet

- (i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;
 - (ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
 - (iii) Terminate the contract for default.
- (2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to --
 - (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.
- (j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.
- (k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of Clause)

52.246-4 -- Inspection of Services -- Fixed-Price (Aug 1996)

As prescribed in 46.304, insert the following clause:

Inspection of Services -- Fixed-Price (Aug 1996)

- (a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may --
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may --
 - (1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or
 - (2) Terminate the contract for default.

(End of Clause)

52.246-5 -- Inspection of Services -- Cost-Reimbursement (Apr 1984)

As prescribed in 46.305, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated:

Inspection of Services -- Cost-Reimbursement (Apr 1984)

- (a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may --
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may --

Production and Quality Management 201 Handout Booklet

- (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
- (2) Terminate the contract for default.

(End of Clause)

52.246-6 -- Inspection -- Time-and-Material and Labor-Hour (Jan 1986)

As prescribed in 46.306, insert the following clause:

Inspection -- Time-and-Material and Labor-Hour (Jan 1986)

(a) *Definitions.*

“Contractor’s managerial personnel,” as used in this clause, means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

- (1) All or substantially all of the Contractor’s business;
- (2) All or substantially all of the Contractor’s operation at any one plant or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

“Materials,” as used in this clause, includes data when the contract does not include the Warranty of Data clause.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be

reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)

- (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may --
 - (i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
 - (ii) Terminate this contract for default.

- (2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to --

- (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
- (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

- (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of Clause)

Alternate I (Apr 1984). If Government inspection and acceptance are to be performed at the contractor's plant, paragraph (e) below may be substituted for paragraph (e) of the basic clause:

- (e) The Government shall inspect for acceptance all items (other than aircraft to be flown away, if any) to be furnished under this contract at the Contractor's plant or plants specified in the contract, or at any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the contract administration office or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time for which inspection and test is requested by the Contractor.

52.246-7 -- Inspection of Research and Development -- Fixed-Price (Aug. 1996)

As prescribed in 46.307(a), insert the following clause:

Inspection of Research and Development -- Fixed-Price (Aug. 1996)

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.
- (d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.
- (e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.
- (f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor --
 - (1) At no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or
 - (2) Within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of Clause)

52.246-8 -- Inspection of Research and Development -- Cost-Reimbursement (Apr 1984)

As prescribed in 46.308, insert the following clause in solicitations and contracts for research and development when --

- (a) The primary objective is the delivery of end items other than designs, drawings, or reports; and
- (b) Cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate:

Inspection of Research and Development -- Cost-Reimbursement (Apr 1984)

- (a) *Definitions.*

“Contractor’s managerial personnel,” as used in this clause, means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --

- (1) All or substantially all of the Contractor’s business;
- (2) All or substantially all of the Contractor’s operation at any one plant or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with performing this contract.

“Work,” as used in this clause, includes data when the contract does not include the Warranty of Data clause.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.
- (f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g)

Production and Quality Management 201 Handout Booklet

- (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may --
 - (i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;
 - (ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or
 - (iii) Terminate the contract for default.
 - (2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to --
- (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.
- (j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.
- (k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of Clause)

Alternate I (Apr 1984). If it is contemplated that the contract will be on a no-fee basis, substitute paragraphs (f) and (g) below for paragraphs (f) and (g) of the basic clause.

- (f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to correct or replace work not meeting contract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Contractor shall not tender for acceptance corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.
- (g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may --

- (1) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost;
- (2) Require delivery of any undelivered articles; or
- (3) Terminate the contract for default. Failure to agree on the amount of increased cost to be charged to the Contractor shall be a dispute.

52.246-9 -- Inspection of Research and Development (Short Form) (Apr 1984)

As prescribed in 46.309, insert the following clause:

Inspection of Research and Development (Short Form) (Apr 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of Clause)

52.246-10 -- Inspection of Facilities (Apr 1984)

As prescribed in 46.310, insert the following clause in solicitations and contracts when a facilities contract is contemplated:

Inspection of Facilities (Apr 1984)

- (a) *Definition.* “Contractor’s managerial personnel,” as used in this clause, is defined in the Liability for the Facilities clause of this contract.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the facilities and work called for by this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test the facilities and work called for by the contract, to the extent practicable at all places and times, including the period of manufacture. The Government may also inspect the facilities and work at the plant or plants of the Contractor or its subcontractors engaged in the performance of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work to be performed by the Contractor under this contract or any related contract.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements. Except as provided in paragraph (f) below, corrections and replacements shall be at Government expense if, under the terms of this contract, the facilities or work corrected or replaced were initially furnished, or required to be performed at Government expense.
- (f) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements, without cost to the Government under this contract

Production and Quality Management 201 Handout Booklet

or any related contract or subcontract, if the defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or to the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

- (g) Corrected or replacement facilities or work shall be subject to this clause in the same manner as facilities or work originally completed under the contract.

(End of Clause)

52.246-11 -- Higher-Level Contract Quality Requirement (Feb 1999)

As prescribed in 46.311, insert the following clause:

Higher-Level Contract Quality Requirement (Feb 1999)

The Contractor shall comply with the higher-level quality standard selected below. [If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]

| Title Number | Date Tailoring |
|--------------|----------------|
| _____. | _____ |
| _____ | |
| _____ | |
| _____. | _____ |
| _____ | |
| _____ | |
| _____. | _____ |
| _____ | |
| _____ | |
| _____. | _____ |
| _____ | |

[Contracting Officer insert the title, number (if any), date, and tailoring (if any) of the higher-level quality standards.]

(End of Clause)

52.246-12 -- Inspection of Construction (Aug. 1996)

As prescribed in 46.312, insert the following clause:

Inspection of Construction (Aug. 1996)

- (a) *Definition.* "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) Government inspections and tests are for the sole benefit of the Government and do not --
 - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.
- (d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may --
 - (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
 - (2) Terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting

Production and Quality Management 201 Handout Booklet

Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of Clause)

52.246-13 -- Inspection -- Dismantling, Demolition, or Removal of Improvements (Aug 1996)

As prescribed in 46.313, insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements:

Inspection -- Dismantling, Demolition, or Removal of Improvements (Aug 1996)

- (a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly, and at no increase in contract price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.
- (b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may --
 - (1) By contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor; and
 - (2) Terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(End of Clause)

52.246-14 -- Inspection of Transportation (Apr 1984)

As prescribed in 46.314, insert the following clause in solicitations and contracts for freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C.1072(b)(1). (See Part 47, Transportation.)

Inspection of Transportation (Apr 1984)

The Government has the right to inspect and test the Contractor's services, facilities, and equipment at all reasonable times. The Contractor shall furnish Government representatives with the free access and reasonable facilities and assistance required to accomplish their inspections and tests.

(End of Clause)

52.246-15 -- Certificate of Conformance (Apr 1984)

As prescribed in 46.315, insert the following clause in solicitations and contracts for supplies or services when the conditions in 46.504 apply:

Certificate of Conformance (Apr 1984)

- (a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.
- (b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.
- (c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.
- (d) The certificate shall read as follows:

I certify that on _____ *[insert date]*, the _____ *[insert Contractor's name]* furnished the supplies or services called for by Contract No. _____ via _____ *[Carrier]* on _____ *[identify the bill of lading or shipping document]* in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

Date of Execution: _____

Signature: _____

Title: _____

52.246-16 -- Responsibility for Supplies (Apr 1984)

As prescribed in 46.316, insert the following clause:

Responsibility for Supplies (Apr 1984)

- (a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon --
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) of this section shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.

- (d) Under paragraph (b) of this section, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of Clause)

52.246-17 -- Warranty of Supplies of a Noncomplex Nature (Apr 1984)

As prescribed in 46.710(a)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design is to be used, insert the word "design" before "material" in paragraph (b)(1)(i).

Warranty of Supplies of a Noncomplex Nature (Apr 1984)

(a) *Definitions.*

"*Acceptance*," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"*Correction*," as used in this clause, means the elimination of a defect.

"*Supplies*," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.*

- (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____ [*Contracting Officer shall state specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] --
 - (i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and
 - (ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.
- (2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.
- (3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.
- (4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

- (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within _____ [*Contracting Officer shall insert specific period of time; e.g., "45 days of the last delivery under this contract," or "45 days after discovery of the*].
- (2) Within a reasonable time after the notice, the Contracting Officer may either --
 - (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or
 - (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.
- (3)
 - (i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer --
 - (A) May, for sampling purposes, group any supplies delivered under this contract;
 - (B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;
 - (C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and
 - (D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
 - (ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:
 - (A) Require an equitable adjustment in the contract price for any group of supplies.
 - (B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.
 - (C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.
 - (D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.
- (4)

Production and Quality Management 201 Handout Booklet

- (i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor --
 - (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
 - (B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
 - (ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.
- (5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(End of Clause)

Alternate I [Reserved]

Alternate II (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(2) for paragraph (b)(2) of the basic clause:

- (2) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate III (Apr 1984). If the supplies cannot be obtained from another source, substitute a paragraph substantially the same as the following paragraph (c)(4) for paragraph (c)(4) of the basic clause:

- (4) If the Contractor does not agree as to responsibility to correct or replace the supplies delivered, the Contractor shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c)(2) of this clause to correct or replace the defective or nonconforming supplies. In the event it is later determined that the supplies were not defective or nonconforming within the terms and conditions of this clause, the contract price will be equitably adjusted.

Alternate IV (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph(c)(6) to the basic clause:

- (6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustment made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate V (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as “(c)(7)” if Alternate IV is also being used.

- (6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-18 -- Warranty of Supplies of a Complex Nature (Apr 1984)

As prescribed in 46.710(b)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor’s design rather than the Government’s design is to be used, insert the word “design” before “material” in paragraph (b)(1).

Warranty of Supplies of a Complex Nature (Apr 1984)

(a) *Definitions.*

“*Acceptance*,” as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

“*Correction*,” as used in this clause, means the elimination of a defect.

“*Supplies*,” as used in this clause, means the end items furnished by the Contractor and related services required under this contract. The word does not include “data.”

(b) *Contractor’s obligations.*

- (1) The Contractor warrants that for _____ [*Contracting Officer shall state the specific warranty period after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; provided, however, that with respect to Government-furnished property, the Contractor’s warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor’s warranty shall extend to the modification or other work.
- (2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.
- (3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the nonavailability.

Production and Quality Management 201 Handout Booklet

- (4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.
 - (5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.
 - (6) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.
- (c) *Remedies available to the Government.*
- (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this clause, the Government may, at no increase in contract price --
 - (i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies; or
 - (ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.
 - (2) If the Contracting Officer does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(3) of this clause, the Government shall be entitled to an equitable reduction in the contract price.
 - (3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within _____. *[Contracting Officer shall insert specific period of time in which notice shall be given to the Contractor; e.g., "45 days after delivery of the nonconforming supplies."; "45 days of the last delivery under this contract."; or "45 days after discovery of the"*
The Contractor shall submit to the Contracting Officer a written recommendation within _____ *[Contracting Officer shall insert period of time]* as to the corrective action required to remedy the breach. After the notice of breach, but not later than _____ *[Contracting Officer shall insert period within which the warranty remedies should be exercised]* after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, direct correction or replacement as in paragraph (c)(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) of this clause, the contract price will be equitably adjusted.
 - (4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this clause shall be _____ *[Contracting Officer shall insert period within which the Contractor must be notified of a breach as to corrected or replaced supplies]* from the furnishing or return by the Contractor to the Government of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for _____ *[Contracting Officer shall insert period within which the Contractor must be notified of a breach of warranty as to corrected or replaced supplies]* thereafter.
 - (5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(End of Clause)

Alternate I [Reserved]

Alternate II (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(5) for paragraph (b)(5) of the basic clause:

- (5) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate III (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

- (6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate IV (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as "(c)(7)" if Alternate III is also used:

- (6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-19 -- Warranty of Systems and Equipment Under Performance Specifications or Design Criteria (Dec 1989)

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated, and the use of a warranty clause has been approved under agency procedures.

Warranty of Systems and Equipment Under Performance Specifications or Design Criteria (Dec 1989)

(a) *Definitions.*

"*Acceptance*," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"*Correction*," as used in this clause, means the elimination of a defect.

"*Defect*," as used in this clause, means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

"*Supplies*," as used in this clause, means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also means "data."

(b) *Contractor's obligations.*

- (1) The Contractor's warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor _____. *[Contracting Officer shall state the warranty period; e.g., "at the time of delivery;" "within 45 days after delivery," or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.]*
- (2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall --
 - (i) Promptly correct the defect; or
 - (ii) Promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.
- (3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within _____. *[Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "30 days after delivery of the nonconforming supplies;" "90 days of the last delivery under this contract;" or "90 days after discovery of the*
Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within _____ *[Contracting Officer shall insert period of time]* a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.
- (4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.
- (5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.
- (6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within _____. *[Contracting Officer shall insert period of time]* to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.
- (7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.
- (8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.
- (9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

- (10) All implied warranties of merchantability and “fitness for a particular purpose” are excluded from any obligation under this contract.
- (c) *Remedies available to the Government.*
- (1) The rights and remedies of the Government provided in this clause --
- (i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and
- (ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.
- (2) Within _____ *[Contracting Officer shall insert period of time]* after receipt of the Contractor’s recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at _____ *[Contracting Officer shall insert locations where corrections may be performed]*.
- (3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor’s obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.
- (4) This clause shall not be construed as obligating the Government to increase the contract price.
- (5)
- (i) The Contracting Officer shall give the Contractor a written notice specifying any failure or refusal of the Contractor to --
- (A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;
- (B) Correct defects as directed under paragraph (b)(4) of this clause; or
- (C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.
- (ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.
- (6) If the Contractor does not comply with the Contracting Officer’s written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise --
- (i) Obtain detailed recommendations for corrective action and either --
- (A) Correct the supplies or services; or
- (B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor’s account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

Production and Quality Management 201 Handout Booklet

- (ii) Obtain applicable data and reports; and
- (iii) Charge the Contractor for the costs incurred by the Government.

(End of Clause)

Alternate I (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

- (9) If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate II (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

- (7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate III (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate the additional paragraph as "(c)(8)" if Alternate II is also being used:

- (7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-20 -- Warranty of Services (Apr 1984)

As prescribed in 46.710(d), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures, unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used:

Warranty of Services (Apr 1984)

- (a) *Definitions.*

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

- (b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor

_____ [Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "within 30 days from the date of acceptance by the Government,"; within 1000 hours of use by the Government;" or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time]. This notice shall state either --

- (1) That the Contractor shall correct or reperform any defective or nonconforming services; or
- (2) That the Government does not require correction or reperformance.
- (c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.
- (d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of Clause)

52.246-21 -- Warranty of Construction (Mar 1994)

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

Warranty of Construction (Mar 1994)

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of --
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

Production and Quality Management 201 Handout Booklet

- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall --
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
 - (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.
- (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.
- (j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of Clause)

Alternate I (Apr 1984). If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

- (k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

52.246-22 -- [Reserved]

52.246-23 -- Limitation of Liability (Feb 1997)

As prescribed in 46.805, insert the following clause:

Limitation of Liability (Feb 1997)

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that --
 - (1) Occurs after Government acceptance of the supplies delivered under this contract; and
 - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of --
 - (1) All or substantially all of the Contractor's business;

- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of Clause)

52.246-24 -- Limitation of Liability -- High-Value Items (Feb 1997)

As prescribed in 46.805, insert the following clause:

Limitation of Liability -- High-Value Items (Feb 1997)

- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that --
 - (1) Occurs after Government acceptance of the supplies delivered under this contract; and
 - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of --
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.
- (d)
 - (1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.
 - (2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer --

Production and Quality Management 201 Handout Booklet

- (i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred;
 - (ii) Provide other equitable relief.
- (e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover --
 - (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or
 - (3) Government property.

(End of Clause)

Alternate I (Apr 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a):

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

52.246-25 -- Limitation of Liability -- Services (Feb 1997)

As prescribed in 46.805, insert the following clause:

Limitation of Liability -- Services (Feb 1997)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that --
 - (1) Occurs after Government acceptance of services performed under this contract; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of --
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of Clause)